

August 14, 2019

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843
(540) 868-4391/4997 (fax)

Re: FOIA Request for Information on Disciplinary Allegations and Penalties

Dear sir or madam:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, we hereby request that your office produce the following records within 20 business days:

1. Any records in the FBI's "Case Management System" for disciplinary measures¹ indicating that an FBI employee was the subject of an oral reprimand, letter of censure, suspension, demotion, removal, or any other adverse or non-adverse action for alleged misconduct relating to [negative / positive] statements he or she had made about [Barack H. Obama / Willard Mitt Romney / Hillary R. Clinton / Donald J. Trump].

This request is for documents dating from November 20, 2011, to the present. We are not requesting the names or any other personally identifiable information about the subjects of these notices and do not object if such information is redacted. We do not believe this request falls within the scope of any existing FOIA exemptions. *See Department of the Air Force v. Rose*, 425 U.S. 352 (1976).

We also request any records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

If you make a determination that any responsive record, or any segment within a record is exempt from disclosure, we ask that you provide an index of those records at the time you

¹ In a May 2009 report entitled "Review of the Federal Bureau of Investigation's Disciplinary System" (available at <https://oig.justice.gov/reports/FBI/e0902/final.pdf>), the Justice Department's Office of the Inspector General described the FBI's use of the Case Management System as follows: "The FBI implemented the Case Management System to track allegations, investigations, adjudications, and appeals in a database in November 2004. One section of the Case Management System tracks precedent decisions for each offense." (p. 28)

transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. §§ 552(a)(8)(A)(ii) & 552(b).

FEE WAIVER

FOIA provides that any fees associated with a request are waived if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

We are the editor-in-chief and senior editor for *Lawfare*, an online publication dedicated to informing public understanding on operations and activities of the government. Lawfare is published by The Lawfare Institute, a 501(c)(3) not-for-profit educational organization, and in cooperation with The Brookings Institution, a 501(c)(3) nonprofit public policy organization. This request is submitted in connection with *Lawfare*’s mission to publish information that is likely to contribute significantly to the public understanding of federal agency activities related to law and national security—specifically, the extent to which FBI personnel are facing inappropriate political pressures. A former senior FBI official who was the subject of disciplinary action due to certain private communications recently accused the FBI and Justice Department of “treat[ing] [him] more harshly than they would have treated similar communications because the content of [his] communications was critical of President Trump.” This request is intended to help determine whether this allegation is true and FBI personnel may be under inappropriate political pressures as a result.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, we are entitled to a waiver of all fees except “reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as “a representative of the news media.” *Id.* *Lawfare* is a “news media organization[]” that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Nat’l Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). We intend to give the public access to documents transmitted via FOIA on our website, <https://www.lawfareblog.com>, and to provide information about and analysis of those documents as appropriate.

EXPEDITED PROCESSING

FOIA provides for expedited processing where a requestor “demonstrates a compelling need.” 5 U.S.C. § 552(a)(6)(E)(i). It defines “compelling need” to include situations where a “request [is] made by a person primarily engaged in disseminating information” and there exists an “urgency to inform the public concerning actual or alleged Federal Government activity.” *Id.* § 552(a)(6)(E)(v).

Lawfare is an organization primarily engaged in the dissemination of information. If FBI personnel are being disproportionately punished due to their political opinions, then this risks compromising a range of important law enforcement and national security investigations. There is an urgent need to inform the public whether these allegations are accurate so that they may encourage their political leaders to correct this behavior and avoid further compromising any ongoing investigations.

* * *

Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact us by phone or email if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,

/s/ Benjamin Wittes

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